

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|   |   |                    |
|---|---|--------------------|
| <b>JOHN P. O'HARA</b>                     | ) |                    |
| Claimant                                  | ) |                    |
| VS.                                       | ) |                    |
|   | ) |                    |
| <b>O'HARA PAINTING CO., INC.</b>          | ) | Docket No. 214,168 |
| Respondent                                | ) |                    |
| AND                                       | ) |                    |
|   | ) |                    |
| <b>INSURANCE COMPANY OF NORTH AMERICA</b> | ) |                    |
| Insurance Carrier                         | ) |                    |
| AND                                       | ) |                    |
|   | ) |                    |
| <b>WORKERS COMPENSATION FUND</b>          | ) |                    |

**ORDER**

The insurance carrier requested review of the preliminary hearing Order dated October 10, 1996, entered by Administrative Law Judge Alvin E. Witwer.

**ISSUES**

The Administrative Law Judge found that the insurance company was providing respondent workers compensation insurance coverage on the date of accident and ordered ongoing medical treatment and temporary partial disability benefits. The insurance carrier asked the Appeals Board to review the issue of insurance coverage. The insurance carrier contends that it had effectively canceled the insurance policy in question before the August 25, 1995, date of accident. Insurance coverage was the only issue raised by the insurance carrier on this review.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

Before it can consider the merits of the insurance carrier's arguments, the Appeals Board must first determine if it has jurisdiction to review the preliminary hearing Order at this juncture of the proceeding. Because of the issue raised, the Appeals Board finds and concludes that it does not have jurisdiction to review that Order.

Reviews of preliminary hearing findings are limited by both K.S.A. 44-534a and K.S.A. 44-551(b)(2)(A). Under K.S.A. 44-534a, the Appeals Board may review preliminary hearing findings regarding the following issues: (1) whether the worker suffered an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether notice was given or claim timely made, and (4) whether certain defenses apply. Under K.S.A. 44-551(b)(2)(A), a preliminary award can be reviewed when the Administrative Law Judge has exceeded his or her jurisdiction in granting or denying the relief requested.

The issue the insurance carrier presented to the Appeals Board is whether insurance coverage is a "certain defense" as contemplated by K.S.A. 44-534a. The Appeals Board finds that it is not. On numerous previous occasions, the Appeals Board has found that the "certain defenses" referred to in K.S.A. 44-534a are defenses which go to the compensability of the claim. Because the insurance coverage issue now before the Appeals Board does not relate to the claim's compensability, the Appeals Board does not have jurisdiction to review the Order under K.S.A. 44-534a.

Likewise, the Appeals Board does not have jurisdiction to review the Order under K.S.A. 44-551(b)(2)(A). Other than the insurance carrier's allegation of lack of insurance coverage, the insurance carrier makes no other claim that the Administrative Law Judge exceeded his jurisdiction or authority. The issue presented is not whether the Administrative Law Judge exceeded his authority but rather whether the Administrative Law Judge erred in determining that insurance coverage existed on the date of accident. The Appeals Board finds that issue is not one subject to review under K.S.A. 44-551(b)(2)(A).

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review the Administrative Law Judge's preliminary hearing findings at this juncture of the proceeding and that this review should be, and hereby is, dismissed. The preliminary hearing Order dated October 10, 1996, entered by Administrative Law Judge Alvin E. Witwer remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1996.

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BOARD MEMBER

c: C. W. Crumpecker, Kansas City, MO  
W. Ann Hansbrough, Kansas City, MO  
Marcia L. Yates, Kansas City, MO  
Gordon M. Rock, Jr., Olathe, KS  
Michael R. Wallace, Shawnee Mission, KS  
Alvin E. Witwer, Administrative Law Judge  
Philip S. Harness, Director